

Filed by the Board of Professional  
Engineers and Land Surveyors on  
Date Aug 28, 2014

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS

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IN THE MATTER OF THE LICENSE OF	:	
	:	Administrative Action
DONALD MESERLIAN, P.E.	:	
License No. 24GE01507900	:	FINAL DECISION AND ORDER
	:	
TO PRACTICE ENGINEERING	:	
IN THE STATE OF NEW JERSEY	:	

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THIS MATTER was returned to the New Jersey State Board of Professional Engineers and Land Surveyors ("Board") to consider a recommended Initial Decision ("ID" or "Initial Decision") by Administrative Law Judge Jeffrey A. Gerson (ALJ") entered on June 13, 2014 following a two day hearing at the Office of Administrative Law. For the reasons set forth hereafter, upon review and consideration of the Initial Decision, transcripts of the hearings, evidence, exceptions from the parties, oral arguments on exceptions and testimony, the Board, at its meeting on July 17, 2014, adopted the findings of fact and conclusions of law set forth in the Initial Decision with the modifications discussed below.

### PROCEDURAL HISTORY

On or about April 20, 2011, the Attorney General filed a four count complaint against the Respondent, Donald Meserlian, P.E., a New Jersey licensed professional engineer. Each Count was based on a consumer complaint filed with the Board and alleged that Respondent engaged in the unlicensed practice of land surveying in violation of N.J.S.A. 45:8-27 and further that his acts as a professional engineer as set forth in the consumer complaints constituted dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in violation of N.J.S.A. 45:1-21(b); gross negligence, gross malpractice, or gross incompetence in violation of N.J.S.A. 45:1-21(c), repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d); and professional misconduct in violation of N.J.S.A. 45:1-21(e) and N.J.A.C. 13:40-3.5(a) (1, 2, 9 and 10). Thereafter, on or about July 26, 2011, Respondent filed an answer to the complaint disputing the allegations. The matter was then transferred to the Office of Administrative Law.

Hearings were held before the ALJ on April 19, 2012 and March 21, 2013. At the April 19, 2012 hearing, the ALJ construed the testimony of Respondent, appearing pro se, as a motion for summary decision on the issue of whether it was within the scope of practice of his New Jersey professional engineer license to prepare a topographic survey. The Attorney General requested that the ALJ

find that Respondent had engaged in the unlicensed practice of land surveying.

By "Order Denying Motion for Summary Decision" entered on June 22, 2012, and re-issued on February 26, 2013, the ALJ denied both motions. However, the ALJ found that: (1) N.J.S.A. 45:8-28(e) and its legislative history was ambiguous as to whether a professional engineer could perform a topographic survey independently, (2) the 2004 Public Notice failed to comply with the formal rule making procedures of the Administrative Procedure Act, and (3) Respondent's practice of depicting topographic measurements on site plans may still have been beyond the scope of his authority as a professional engineer and instead within the sole ambit of a professional land surveyor under N.J.A.C. 13:40-7.2. (ID at 9). On March 21, 2013, the ALJ conducted the final hearing and issued an Initial Decision.

Thereafter, Deputy Attorney General Wendy Leggett Faulk ("DAG") filed exceptions on June 25, 2014. Respondent's various e-mails and faxes to Executive Director Karl Reidel, which were received subsequent to the June 26, 2014 exception deadline, were nonetheless accepted by the Board and considered as exceptions. On July 17, 2014 the parties appeared before the Board to present oral arguments on exceptions and, thereafter, upon finding of violations, a hearing regarding mitigating and aggravating circumstances for determination of penalty was held.

## DISCUSSION ON FINALIZATION

### June 22, 2012 Order Denying Motion for Summary Decision

The Board does not disturb the ALJ's decision to deny both motions for summary decision. However, the Board addresses the issue of rule making, and for the reasons set forth hereafter, finds the issue to be moot in light of the findings in the ALJ's Initial Decision and this Final Decision and Order.

In his Order, the ALJ analyzed the Board's "Notice Regarding Preparation of Topographic Surveys and Existing Conditions Depicted on Site Plans" (hereafter "2004 Public Notice"), 36 N.J.R. 5008(a) (Nov. 1, 2004), and found that the Board's determination that only a New Jersey licensed professional land surveyor ("professional land surveyor") - not a New Jersey licensed professional engineer ("professional engineer") - is authorized by N.J.S.A. 45:8-28(e) and N.J.A.C. 13:40-7.2(a) to prepare a topographic survey, required rule making. For the reasons set forth hereafter, the Board finds that its rule, N.J.A.C. 13:40-7.2(a), deals with the scope of practice of, and the relationship between, a professional engineer and professional land surveyor in accordance with N.J.S.A. 45:8-28(e), and that further rule making is unnecessary. It further finds that the distinctions made between surveys, such as a topographic and/or boundary survey, are not relevant since only a professional land surveyor is authorized by statute to prepare a survey.

More specifically, the applicable statute, N.J.S.A. 45:8-28(e), defines the "practice of land surveying", and sets forth the permitted scope of practice for a professional land surveyor in relevant part as follows:

... any service or work the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law to the act of measuring and locating distances, directions, elevations, natural and man-made topographical features in the air, on the surface of the earth, within underground workings, and on beds of bodies of water for the purpose of determining areas and volumes, and for the establishing of horizontal and vertical control as it relates to construction stake-out, for the monumentation of property boundaries and for the platting and layout of lands and subdivisions thereof and for the preparation and perpetuation of maps, record plats, field notes, records and property descriptions in manual and computer coded form that represent these surveys. (emphasis added)

N.J.S.A. 45:8-28(e) further provides a limited exception ("exception language") for a professional engineer to perform measurements as follows:

Nothing in this chapter shall preclude a person licensed by the board as a professional engineer from performing those measurements necessary for the design, construction stakeout, construction and post-construction records of an engineering project, provided that these measurements are not related to property lines, lot lines, easement lines, or right-of-way lines, the establishment of which are required to be made by a land surveyor. (emphasis added)

The Board finds that the statute clearly provides that a professional land surveyor "measures and locates" to determine the exact location of existing conditions, such as natural and man-made topographical features, and prepares maps of those existing

conditions, including surveys; and, further finds that a professional engineer can perform "measurements" of existing conditions, including the height, width, depth or dimension, for an engineering project with certain limitations. Notably, however, there is no statutory authority for a professional engineer to use measurements to prepare a map of existing conditions, such as a survey, as specifically authorized by statute for a professional land surveyor. Rather, as discussed herein, a professional engineer is authorized to prepare a site plan showing proposed conditions reflecting his/her engineering design and a professional land surveyor is authorized to prepare a survey showing the exact location of existing conditions. A professional engineer is permitted to transfer those existing conditions from the survey to the site plan with proper credit being given.

In that regard, the Board's "Site Plan Rule", N.J.A.C. 13:40-7.1 et seq., sets forth the permissible scope of practice authorized by statute for, and the relationship between, these two professions, as well as licensed architects, licensed landscape architects and professional planners. The Site Plan Rule is a uniform rule found within the regulations of the State Board of Professional Engineers and Land Surveyors (N.J.A.C. 13:40-7.1, et seq.), the State Board of Architects (which includes licensed landscape architects) (N.J.A.C. 13:27-7.1 et seq.) and the State Board of Professional Planners (N.J.A.C. 13:41-4.1 et seq.). The

statute recognizes the licensees of these three (3) Boards as "closely allied professionals" pursuant to N.J.S.A. 45:8-28(j) and N.J.S.A. 45:3-1.1(f) and the Site Plan Rule defines their relationships and respective scopes of practice. As a result, changes to the Site Plan Rule require the approval of all three Boards.

Importantly, it operates as an inclusive rule, not exclusive - meaning that it sets forth what each profession is authorized to do, rather than what it is not authorized to do. Specifically, as to the preparation of a survey, N.J.A.C. 13:40-7.2, provides:

(a) Survey: Showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements: By a land surveyor.

1. Survey information may be transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. A signed and sealed copy of the survey shall be submitted to the reviewing governmental body with the site plan submission. (emphasis added)

See also N.J.A.C. 13:27-7.2 and N.J.A.C. 13:41-4.2.

Thus, only a professional land surveyor - not a professional engineer, licensed architect, licensed landscape architect or professional planner - is authorized to prepare a survey. Consistently, N.J.A.C. 13:40-7.3, dealing with the scope of practice in the preparation of a site plan, authorizes a professional engineer, licensed architect, licensed landscape architect and professional planner to prepare various components of

a site plan - but does not include a professional land surveyor because it is not within the scope of practice of that profession.

Additionally, the Board's rules at N.J.A.C. 13:40-5.1 et seq. deal with, and set the standards for, the preparation of surveys by a professional land surveyor - not a professional engineer, licensed architect, licensed landscape architect or professional planner. There are no corresponding rules setting standards for these professions because it is well established that only a professional land surveyor can prepare a survey.

Thus, the Board's 2004 Public Notice was simply that - a notice of the Board's well-established existing laws to remind licensees of their authorized scope of practice pursuant to the statute and the Site Plan Rule. The Notice did not effect a change in existing law, interpret language in an unestablished way or impose any new requirements; rather, it merely directed licensees to the laws that the Board would seek to enforce, if necessary, at an administrative hearing - such as in this case.

The Board's two subsequent rule making efforts never deviated from its long-standing interpretation that only a professional land surveyor can prepare a survey. The larger issue dealt with the kinds of "measurements" that can be performed by a professional engineer under the exception language. The Board was unable to promulgate a rule that adequately encompassed the numerous scenarios which were fact specific based on the type of engineering



project. Ultimately, the Board did not believe that the goals of rule making would be served by merely reciting verbatim the statutory language into its rules and, therefore, among other reasons, abandoned its rule making efforts. Instead, the Board continues to rely upon its statute and the Site Plan Rule.

In the present case, the Board finds that the ALJ correctly applied its Site Plan Rule, N.J.A.C. 13:40-7.2(a), to find that Respondent had exceeded the scope of practice of a professional engineer and, thus, had engaged in the unlicensed practice of land surveying by showing existing conditions on his site plan without properly transferring them from a survey prepared by a professional land surveyor. However, it would be inconsistent and illogical to require a professional engineer to transfer existing conditions from a survey prepared by a professional land surveyor and attach that survey to the site plan, but also conclude that a professional engineer can prepare that same survey. Rather, it is understood by the three Boards and their licensees that only a professional land surveyor is authorized to prepare a survey. In light of the ALJ's finding of unlicensed practice, the Board addresses the issue of rule making for clarification purposes, but ultimately finds it to be moot.

#### COUNTS I, II, III AND IV

The DAG filed exceptions as to Counts III and IV, as well as the proposed penalty. As more fully discussed hereafter, the DAG

argued that the ALJ erred by not finding that Respondent had engaged in the unlicensed practice of land surveying as to Counts III and IV. Based on the DAG's exceptions to Count III, the Board requested clarification from the DAG and Respondent as to the findings in Count I. The DAG argued that in Count I the ALJ found that Respondent had engaged in the unlicensed practice of land surveying by offering to prepare a survey.

Respondent generally takes exception to the entire Initial Decision because he argued that the ALJ had a conflict of interest. He also argued that he has a legal right to measure existing topography in connection with his engineering projects as supported by a Bergen County Small Claims Court decision against C.P. Respondent also stated that the ALJ erred by not considering R-9, dealing with his interpretation of the Board's statutes and this decision, and by not giving it the appropriate weight and, further, that under res judicata he should not be required to stand trial for the same offense.

Finally, Respondent argued that the Board does not have the right to tell him that he cannot take measurements or prepare a topographic survey under the exception language. Rather, Respondent stated that he can prepare surveys, and/or measure existing conditions in order to locate their exact position to place them on his engineering plans without transferring that survey information from a survey prepared by a professional land

surveyor, if a municipal engineer accepts his site and grading plan. Respondent also argued that the national organization for professional engineers and professional land surveyors, NCEES, has guidelines that the Board is required to follow and that under those guidelines he is permitted to take measurements and prepare surveys. He also stated that he can prepare surveys under his New York professional engineering license.

The Board agrees that Respondent can take measurements of an existing condition - including the height, width, depth and/or dimension of that existing condition - in connection with his engineering project with limitations pursuant to the exception language. The Board does not agree that Respondent can take measurements and use them to prepare a survey and/or to locate the exact position of an existing condition(s) to show on his site plan. He must transfer that survey information from a survey prepared by a professional land surveyor. Further, the Board's interpretation of its statutes and rules is controlling - not the guidelines of NCEES; not the laws governing the practice of professional engineers in New York; not the interpretations of licensees, such as Respondent.

Finally, the Board finds that Respondent's reliance upon a decision from a small claims court of limited jurisdiction to support his practice position to be misplaced - and further finds it unlikely that the Court would have made a decision regarding

whether Respondent could prepare a survey or on any other practice issue. The Board also finds that the ALJ gave R-9 its appropriate weight.

Thus, taking into consideration the entire record, including oral arguments on exceptions and testimony as to Counts I through IV, the Board finds as follows:

COUNT I

The Board adopts the ALJ's findings of fact and conclusions of law as to Count I with the following modifications on the issue of the unlicensed practice of land surveying.

The ALJ found that Respondent offered and prepared a "Swimming Pool Site & Grading Plan" in June 2005 for R.B. which included existing site conditions, such as topographical elevation measurements and information not included on the Cornerstone Survey. (ID at 17, 18 and 24) Thus, the ALJ determined that Respondent engaged in the unlicensed practice of land surveying in violation of N.J.S.A. 45:8-27 by failing to properly transfer existing conditions from a survey prepared by a professional land surveyor to his site plan as required by, and in violation of, N.J.A.C. 13:40-7.2(a).

In addition, the Board finds that because Respondent's "Swimming Pool Site & Grading Plan" had elements of both a site plan and survey, that it is in fact a combined site plan and survey which was offered and prepared by him. Respondent measured and

located the existing conditions on the property, and rather than prepare a separate document entitled "survey", he incorporated that survey information into his "Swimming Pool Site & Grading Plan", thus creating the combined site plan and survey. Therefore, the Board finds that Respondent's offer to prepare, and his preparation of, a survey as incorporated into his "Swimming Pool Site & Grading Plan", constitutes the unlicensed practice of land surveying, as defined in N.J.S.A. 45:8-28(e), in violation of N.J.S.A. 45:8-27 and N.J.A.C. 13:40-7.2(a).

Finally, the Board corrects the citation for "professional misconduct" from N.J.S.A. 45:1-21(d) to N.J.S.A. 45:1-21(e). (ID at 30)

#### COUNT II

The Board adopts the ALJ's findings of fact and conclusions of law as to Count II.

#### COUNT III

The Board adopts the ALJ's findings of fact and conclusions of law as to Count III with the following modifications on the issue of the unlicensed practice of land surveying.

The ALJ found that Respondent prepared a "Site & Grading Plan" dated June 2006 for J.M. in Wayne Township and that the exact locations of topographic conditions of the property were not transferred from a survey prepared by a professional land surveyor, because no survey existed. (ID at 19 and 26) In exceptions, the

DAG argues that Respondent testified that he had prepared a preliminary topographic survey for J.M. and was paid for the survey as well as "setting stakes" on the property.

Based on Respondent's admissions, the Board finds that the ALJ erred by not finding that Respondent's June 2006 Site & Grading Plan, whether preliminary or incomplete, was a combined site plan and survey which was offered and prepared by him. Further, the Board rejects the ALJ's finding and characterization that the existing conditions, including contours reflecting elevations, shown on Respondent's Site & Grading Plan were more aptly described as the general location of buildings, structures, and vegetation than any exact location as permitted by N.J.A.C. 13:40-7.2(b). (ID at 26) There is no evidence to support that Respondent was merely attempting to show the approximate location of existing conditions on his Site & Grading Plan. Rather, Respondent admitted to preparing an incomplete topographic survey which was incorporated into his Site & Grading Plan.

Thus, the Board finds that Respondent's offer to prepare, and his preparation of, a survey as incorporated into his "Site & Grading Plan", constitutes the unlicensed practice of land surveying, as defined in N.J.S.A. 45:8-28(e), in violation of N.J.S.A. 45:8-27 and N.J.A.C. 13:40-7.2(a). The Board further finds that Respondent's acts of setting the property corner markers

constitutes the unlicensed practice of land surveying in violation of N.J.S.A. 45:8-27.

COUNT IV

As to Count IV, the ALJ found that Respondent was hired as an expert by C.P. and also offered to establish a boundary line and perform a topographic survey, prepare a site plan depicting existing structures, grading, and elevations, establish the western boundary line, and/or perform an as-built survey for her property, all of which he was never hired to perform. (ID at 27) The ALJ further found that the record did not establish whether Respondent would have undertaken these services independently or if he would have relied upon the work of a licensed professional land surveyor like he did for D.B. Thus, the ALJ did not find any violations of the law. (ID 27 and 33)

In exceptions, the DAG stated that Respondent offered to establish a western boundary line, establish the elevations of the rear dwelling foundation corners and measure the rear yard topography. The Attorney General argued that Respondent never suggested he would hire a land surveyor to perform any of the land surveying services and that there was evidence to support that he would have performed those services independently. The Board, however, agrees with the ALJ that the record did not establish whether Respondent intended to perform the land surveying services himself or hire a professional land surveyor. Thus, the Board

adopts the ALJ's findings of fact and conclusions of law as to Count IV.

Finally, the Board corrects the initials from "J.M." to "C.P." in the conclusion paragraph on page 33 of the Initial Decision.

#### DISCUSSION ON PENALTY

The Board's mandate is to protect the public's health, safety and welfare. Each disciplinary case must be judged on its own facts with the goal of protecting the interests of the public, including maintaining the public trust and confidence in the profession, while giving consideration to the mitigating factors presented by the licensee involved.

At the mitigation hearing, Respondent testified that he had a long unblemished career as a professional engineer and was an inventor. Respondent also testified that a suspension of his license would harm him, although he failed to articulate how a suspension would impact him or provide any documentation to support his position.

The Board recognizes and respects Respondent's contribution as a professional engineer through his many years in the practice. But, since in or about 2003 Respondent has known that his invented system of measuring and locating existing conditions for the purpose of preparing a survey, or incorporating that survey information onto his site and grading plan thus creating a combined site plan and survey, was not permitted. Yet he chose to ignore



the Board and continued to use this system to prepare surveys rather than hire a New Jersey licensed professional land surveyor. Ultimately his failure to obtain a proper survey from a professional land surveyor negatively impacted his engineering design, as evidenced by the numerous deficiencies in his plans as indicated in the Board's findings regarding the allegations in Counts I, II and III, to the detriment of the public.

Of particular concern is that Respondent has shown no remorse and testified that he will continue to utilize his unauthorized system to prepare his plans. However, it appears that currently Respondent has had limited swimming pool projects, and rather mainly provides expert testimony in slip and fall cases. Also, despite Respondent's assertions that municipal engineers accept his site and grading plans without a survey, it appears that he only deals with a handful of municipalities and, in fact, there is no evidence to support that they continue to accept his plans without a proper survey. Nevertheless, it is expected that a Board licensee would comply with its statutes and rules and alert the Board to any improper practices by another professional engineer or professional land surveyor.

Thus, based on the Board's findings of additional violations in Counts I and III, as well as Respondent's failure to recognize his deficiencies and his lack of remorse, the Board is persuaded that a longer period of suspension than that proposed by the ALJ is

warranted in order to safeguard the interests of public. However, in light of Respondent's limited practice and circumstances, the Board has chosen not to impose the maximum statutory penalties permitted by law. Rather, the Board has chosen to accept the ALJ's recommended civil penalty of \$10,000.00, but stay payment of the penalty with conditions in order to maintain the public trust and confidence and to ensure Respondent's future compliance with the laws relating to the practice of engineering.

As to the imposition of costs in this matter, the Board has reviewed the costs sought by the State and finds a portion of the application sufficiently detailed and the amount reasonable given the length of time expended and complexity of the prosecution of this matter. Costs are traditionally imposed pursuant to N.J.S.A. 45:1-25 so as not to pass the cost of the proceedings onto licensees who support Board activities through licensing fees. As to the costs in this matter, the Board's analysis follows.

The Attorney General's certification in this matter documented the time expended in these proceedings which reflected a total of attorneys' fees in the amount of \$58,047.50. The rates charged by the Division of Law of \$175.00 for a Deputy Attorney General with 10 or more years of experience, \$155.00 for 5-10 years of experience and \$135.00 for 0-5 years of experience, has been approved in prior litigated matters and appears to be well below the community standard. The Board finds the Certification attached

to the billings to be sufficient for DAG Faulk and that her billings are justified in light of the second day of hearing and extensive submissions required to fully address the complex issues raised in the administrative complaint and those raised by Respondent, a pro se litigant, and for post hearing briefs and exceptions. It is noted however that the attorney's time spent to attend the hearing before the Board on exceptions is not included.

The Board further notes that the time for DAG Lim is summarized, but not extensively documented. However, the Board has reviewed the written submission and is aware that he prepared for and attended the first day of trial on April 19, 2012. It is the Board's understanding that DAG Lim handled the proceeding from prior to the filing of complaint until DAG Faulk was substituted as counsel following the first day of hearing. The Board notes that DAG Faulk's time was extensively documented from March 2013 through June 2014 including time to familiarize herself with this matter, handle the second day of hearing and prepare a comprehensive post hearing brief.

Thus, although the Board finds the bulk of the application for attorneys fees to be sufficiently detailed to permit the conclusion that the amount of time spent on each activity, and the overall fees sought, are objectively reasonable, a reduction is warranted given that two attorneys had to become familiar with the matter and that the time for DAG Lim was summarized. See Poritz v. Stang, 288

N.J. Super. 217 (App. Div. 1996). Although the Board is satisfied that the Attorney General's claims are reasonable, especially when viewed in the context of the seriousness and scope of the action maintained against the Respondent, the complexity of the case and voluminous evidence, the Board has determined to reduce the amount of attorneys' fees awarded by eliminating DAG Lim's time, and that of AAG Jespersen, as time records were not submitted. Thus, attorneys' fees have been reduced from \$58,047.50 to \$30,572.50 representing only DAG Faulk's time.

Additionally, the Board is aware from testimony and past dealings with Respondent that his practice of engineering is limited and that he will likely incur financial hardship by bearing the full weight of the costs. The Board also believes that Respondent should not be fully responsible in carrying the burden of legal fees incurred related to the transition in legal counsel. Accordingly, the Board finds it appropriate to further reduce the amount of attorney's fees from \$30,572.50 to \$20,000.00.

The Board takes notice that investigative costs, approved many times in the past, are based on salaries, overhead and costs of state employees. Considering the important state interest to be vindicated, protection of the public by assuring that licensees practice within the standard of care and scope of practice, the investigative costs of \$780.46 sought are necessary and certainly

reasonable, with appropriate time records and documentation submitted.

Similarly, the expert costs and court reporting/transcript costs as set forth in DAG Faulk's Certification are necessary to this proceeding. Although an invoice for court reporting/transcript costs of \$846.60 was not attached to the Certification, the Board finds that in its experience these fees for two days of trial are reasonable. The Board notes that transcription costs for the July 17, 2014 proceeding have not been sought and will not be awarded.

Further, a Certification of total expert fees paid by the State (invoices were not attached) totaling \$13,675.00 was submitted. Evidence reveals that the expert had more than 36 years of experience in professional engineering and professional land surveying. In the Board's experience, reasonable expert fees with this background would be at least \$175.00-\$200.00 per hour. Taking into consideration the preparation, travel and testimony for two days of trial and preparation of the four comprehensive expert reports submitted, the Board believes an expert would reasonably spend between 50-75 hours on this matter, including 7 hours for each day of trial. Thus, the Board finds that expert fees between \$8,750.00 (based on 50 hours @ \$175.00 per hour) and \$15,000.00 (based on 75 hours @ \$200.00 per hour) to be reasonable. The Board would award the lower amount given the lack of detail submitted.

However, the Board is mindful of Respondent's circumstances and finds that adjusting the expert costs down further to \$8,372.94, for total costs of \$30,000.00 as set forth below, to be appropriate and reasonable.

Accordingly, the Board is satisfied that the following costs awarded with a reduction in attorneys' and expert fees are reasonable:

Expert Costs	\$ 8,372.94
Transcript Costs	846.60
Investigative Costs	780.46
Attorneys' Fees	20,000.00

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TOTAL	\$30,000.00
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Finally, the Board believes that restitution, as proposed by the ALJ, to the consumers R.B., C.P. and J.M., who filed complaints, is necessary. It is undisputed that J.M. paid \$1,750.00 to Respondent and the Board agrees with the ALJ that restitution is appropriate. Although the ALJ found no violations in Count IV as to C.P., he recommended restitution. The Board agrees since the record reflects that C.P. did not ultimately hire Respondent. As to R.B., at the July 17, 2014 hearing Respondent testified that he did not know the exact amount paid by R.B., but that it would have been approximately \$1,200.00. The Board finds

this consistent with Respondent's billing practices and accepts that amount in determining restitution.

ORDER

ACCORDINGLY, IT IS ON THIS 28<sup>th</sup> day of August, 2014,  
HEREBY ORDERED THAT:

1. Respondent's license to practice as a professional engineer in the State of New Jersey shall be, and hereby is, **SUSPENDED** for a period of two (2) years, the first twelve (12) months to be served as a period of active suspension effective September 1, 2014 and the remaining twelve (12) months to be stayed and served as a period of probation. During the probationary period, if the Board receives reliable information that Respondent is in violation of any provision of this Final Decision and Order, then any remaining period of stayed suspension shall be activated. Prior to activation of the stayed suspension, Respondent shall be provided with written notification and an opportunity to be heard with regard to the information received by the Board.

2. Respondent shall immediately **CEASE AND DESIST** from the unlicensed practice of land surveying, including, but not limited to: offering to prepare and/or preparation of a survey; and offering to set the property corners markers and/or engaging in the act of setting the property corner markers.

3. Respondent shall pay a total civil penalty in the amount of Ten Thousand Dollars (\$10,000.00) to be **STAYED** in its entirety **provided** that Respondent fully complies with the provisions set forth in this Final Decision and Order. Upon receipt of reliable information that Respondent has violated any provision of this Final Decision and Order, and/or has engaged in acts constituting the unlicensed practice of land surveying, then upon written notification to Respondent and an opportunity to be heard by him, the civil penalty of \$10,000.00 shall become immediately due and payable. Failure to make the required payment shall result in the issuance of a Certificate of Debt and/or any other remedies as permitted by law.

4. Within six (6) months of the filing date of this Final Decision and Order, Respondent shall pay attorney's fees and costs in the amount of Thirty Thousand Dollars (\$30,000.00). Payment shall be made by certified check, bank check or money order payable to the "State of New Jersey" and forwarded to Karl Reidel, Executive Director, State Board of Professional Engineers & Land Surveyors, 124 Halsey Street, 3<sup>rd</sup> Floor, Newark, New Jersey 07102. Failure to make the required payment shall result in the issuance of a Certificate of Debt and/or any other remedies as permitted by law.

5. Within thirty (30) days of the filing date of this Final Decision and Order, Respondent shall pay restitution as follows:



(a) Payment of \$1,200.00 shall be made by certified check, bank check or money order payable to R.B. (full name of consumer to be on the check or money order) and forwarded to Karl Reidel, Executive Director, State Board of Professional Engineers & Land Surveyors, 124 Halsey Street, 3rd Floor, Newark, New Jersey 07102;

(b) Payment of \$1,750.00 shall be made by certified check, bank check or money order payable to J.M. (full name of consumer to be on the check or money order) and forwarded to Karl Reidel, Executive Director, State Board of Professional Engineers & Land Surveyors, 124 Halsey Street, 3rd Floor, Newark, New Jersey 07102; and

(c) Payment of \$1,200.00 shall be made by certified check, bank check or money order payable to C.P. (full name of consumer to be on the check or money order) and forwarded to Karl Reidel, Executive Director, State Board of Professional Engineers & Land Surveyors, 124 Halsey Street, 3rd Floor, Newark, New Jersey 07102.

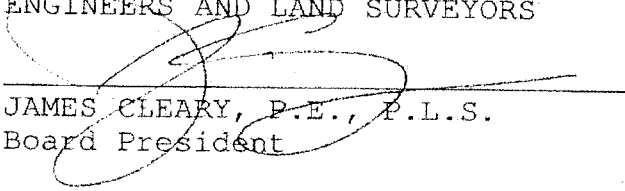
Failure to make any of the required restitution payments shall result in the issuance of a Certificate of Debt and/or any other remedies as permitted by law.

6. Prior to resuming active practice in the State of New Jersey, Respondent shall file an application for reinstatement and provide proof to the satisfaction of the Board that: (1) he has

fully complied with the terms and provisions of this Final Decision and Order; and, (2) he meets the requirements for reinstatement, including, but not limited to, providing proof that he has successfully completed all required continuing education credits.

NEW JERSEY STATE BOARD OF PROFESSIONAL  
ENGINEERS AND LAND SURVEYORS

By:

  
JAMES CLEARY, P.E., P.L.S.  
Board President